

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling Regarding)	CG Docket 17-131
Broadband Speed Disclosure Requirements)	
)	

COMMENTS OF ADTRAN, INC.

ADTRAN, Inc. (“ADTRAN”) files these comments on the Petition for Declaratory Ruling filed by USTelecom and NCTA – The Internet & Television Association seeking clarification of certain aspects of the Commission’s regulations governing broadband speed disclosures.¹ The *Petition* seeks clarification of the Commission’s requirements for broadband speed disclosures and a declaration of federal primacy of those requirements over inconsistent state efforts to regulate broadband speed disclosures. As explained herein, ADTRAN believes the Petitioners have identified a legitimate concern, and thus ADTRAN supports grant of the *Petition*.

ADTRAN, founded in 1986 and headquartered in Huntsville, Alabama, is a leading global provider of networking and communications equipment. ADTRAN’s products enable voice, data, video and Internet communications across a variety of network infrastructures. ADTRAN’s solutions are currently in use by service providers, private enterprises, government organizations and millions of individual users worldwide. ADTRAN thus brings an expansive perspective to this proceeding, as well as a deep understanding of the technological issues

¹ Public Notice, “Comment Sought on USTelecom and NCTA – The Internet & Television Association Petition for Declaratory Ruling Regarding Broadband Speed Disclosure Requirements,” DA 17-482, released May 17, 2017 (hereafter cited as “*Petition*”).

surrounding broadband speed measurement. Indeed, ADTRAN has been an active participant in and contributor to the Commission's efforts to date to establish broadband measurement requirements.²

ADTRAN agrees with the Petitioners that the state efforts to regulate broadband speed disclosures and advertising creates two significant problems. First, having a patchwork of inconsistent state and federal requirements would impose undue burdens on the Internet Service Providers ("ISPs") and confuse customers. For the large ISPs, advertising is not limited to local markets – advertising occurs on regional or national platforms. Moreover, for wireless broadband services, the major ISPs offer nationwide service. Having to tailor advertising and/or disclosures to fit 51 separate sets of state obligations would be exceedingly difficult, if not impossible. In addition, consumers would find it difficult to make "apples-to-apples" comparisons of the service options if the states use inconsistent methodologies for measuring broadband speeds. Uniform federal measurement standards ensure that consumers can choose service providers based on comparable assessments of broadband speeds.³

A second significant problem with the states' efforts to regulate broadband advertising/disclosures, which exacerbates the "patchwork" problem, is that the particular testing methodologies relied on by the states are significantly flawed. The Commission -- working with

² *E.g.*, ADTRAN Ex Parte Notice in Docket 10-90, filed October 30, 2015; ADTRAN Comments in Docket 11-42, filed August 31, 2015; ADTRAN Comments in Docket 10-90, filed December 22, 2014; ADTRAN Comments in Docket No. 13-184, filed September 9, 2013; ADTRAN Reply Comments in Docket No. 09-51, filed August 6, 2012; ADTRAN Comments in Docket No. 10-90, filed January 18, 2012; ADTRAN Comments in Docket 10-90, filed April 18, 2011; ADTRAN White Paper submitted in Docket No. 09-51, filed November 4, 2009.

³ Other examples of such uniform federal advertising/disclosure requirements include gasoline octane ratings (16 C.F.R. Part 306), airfares (14 C.F.R. §§ 399.84 and 399.85), auto mileage (40 C.F.R. Part 600, Subpart D) and appliance electricity efficiency (16 C.F.R. Part 305).

a wide variety of entities, including ADTRAN – developed the Measuring Broadband America programs as a means of determining broadband speeds in a consistent and thorough manner.⁴ As the *Petition* observes, the states utilize alternative measurement tools, including speed tests offered to the public by Ookla (Speedtest.net) and M-Labs (the Internet Health Test or IHT).⁵ Use of these speed tests may not be an accurate measure of the broadband networks’ actual operations for a number of reasons, particularly when compared to the Measuring Broadband America program.

As an initial matter, the speed that any particular location/customer achieves can vary depending on a variety of factors, including the technology being used. In addition, these alternative measurement tools that the states are relying on utilize a single or small number of measurements that can occur at a time when there is congestion in the network or other anomalies that make the results unrepresentative. Moreover, the alternative measurement tools used by the states involve “self-selection” from a location or time that may not be typical, and so can magnify these effects. Most importantly, the specific results under these tests can be affected by other devices and/or programs running on a consumer’s network, as well as being affected by the particular consumer device being used to conduct the test and the inside wiring/Wi-Fi network in the consumer’s home or office. In particular, the performance of home Wi-Fi networks can have a significant impact on TCP end-to-end broadband performance.⁶ The

⁴ See generally, <https://www.fcc.gov/general/measuring-broadband-america-policy-openness-and-transparency>.

⁵ *Petition* at p. 4.

⁶ Sundaresan S., Feamster N., Teixeira R. (2015) Measuring the Performance of User Traffic in Home Wireless Networks. In: Mirkovic J., Liu Y. (eds) Passive and Active Measurement. PAM 2015. Lecture Notes in Computer Science, vol 8995. Springer, Cham.

results can also be affected by the distance between the consumer's home and the measurement node for that particular speed measurement tool.

The Measuring Broadband America program was designed through an extensive, collaborative process to eliminate such measurement flaws. The Measuring Broadband America program utilizes a number of parameters to ensure that the results fairly reflect the broadband speeds being provided by ISPs, including use of specified averaging (and discarding anomalous results), whiteboxes, representative population samples, and standardized measurement techniques with regard to factors such as time-of-day and measurement nodes.⁷ Indeed, the Commission has designated use of the Measuring Broadband America testing program as a “safe harbor” for compliance with the Commission’s Open Internet disclosure requirements.⁸

For all of these reasons, ADTRAN urges the Commission to grant the *Petition*. Such a Declaratory Ruling would well serve the public interest by preventing a patchwork of inconsistent state disclosure requirements based on flawed measurement tools.

Respectfully submitted,

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By: _____/s/

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⁷ E.g., [Technical Appendix](#), 2015.

⁸ *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, Public Notice, 26 FCC Rcd 9411, 9414-15 (2011). And unlike the *ad hoc* attempts by states to regulate broadband speed disclosures through individual law enforcement investigations, the Commission’s broadband disclosure rules have been in effect since 2010 (having been upheld by the *Verizon* decision, *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014)).